

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No. 05-6
Revision of the Public Notice)	
Requirements of Section 73.3580)	

TO: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits this reply to certain comments on the Commission’s *Notice of Proposed Rulemaking* in this proceeding.² In the *Notice*, the Commission proposed to modify the public notice that radio and television station buyers and sellers must provide about station sales and to require usage of particular standardized text in the print and broadcast notices about these sales. NAB supports the goal of better informing the public about the sales of broadcast stations and proposals directly furthering that goal. Like other commenters, however, NAB opposes proposals that would not achieve this goal,³ but would instead cause confusion among members of the public, delay the Commission’s processes and the grant of meritorious license assignments and transfers, or needlessly burden licensees, especially small and noncommercial stations.

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks, which serves and represents the American broadcasting industry.

² *Notice of Proposed Rulemaking* in MB Docket No. 05-6, FCC 05-10 (rel. March 15, 2005) (“*Notice*”).

³ See Comments of Station Resource Group (“SRG”) and Public Radio Capital (“PRC”) at 1 (filed Aug. 1, 2005).

As NAB stated in its initial comments, if the Commission ultimately determines to adopt standardized text for notices of station sales, it must be careful in its choice of language. In particular, the Commission should avoid creating confusion among members of the public and inadvertently inviting comments and objections to sales that raise matters not substantially and materially related to the actual sales at issue or that are not germane under the Communications Act. *See* NAB Comments at 1-2.

Some of the proposals made by commenters would likely lead to such confusion and the inviting of objections to proposed sales that have no legal basis under the Communications Act. For example, requiring information about “other media outlets that the proposed buyer already owns” may mislead the public by suggesting that a buyer’s mere ownership of any other media property is a valid legal basis upon which “objections to” a “proposed station sale” may be made.⁴ In fact, if a proposed purchaser is in compliance with the Commission’s multiple ownership rules, the existence of other commonly-owned media properties provides no valid legal basis upon which a transfer or assignment application may be denied.⁵ Similarly, requiring information in the notice as to “whether the proposed buyer is a local entity” may mislead members of the public about the legal relevance of the local or non-local status of a proposed station purchaser. Comments of UCC *et al.* at 7. The fact that a proposed purchaser is not “local” does not of course,

⁴ *See* Comments of Office of Communication of the United Church of Christ, Inc. *et al.* at 8 (filed Aug. 1, 2005).

⁵ The FCC’s transfer and assignment application Forms 314 and 315 ask detailed questions about the proposed purchaser’s other attributable media ownership interests so that the Commission can ensure that all station sales comply with the local and national multiple ownership rules. Members of the public already have and will continue to have access to the complete transfer and assignment applications containing this information. Thus, requiring the inclusion of information pertaining to other ownership interests in the public notice would not provide additional information that is currently unavailable to members of the public.

in and of itself, disqualify or even lead to disfavoring that purchaser.⁶ And the Commission is forbidden by statute from considering whether a proposed out-of-market purchaser is less desirable than a local entity or person that may be preferred as a purchaser by any member of the public filing objections or petitions to deny against a transfer or assignment application.⁷

The Commission should therefore be cautious about requiring public notices of sales to include such additional information that may well inadvertently invite comments on and objections to transfers and assignments that are not germane under the Communications Act. Even nonmeritorious objections will burden licensees (especially small and noncommercial stations) in responding, will divert scarce FCC resources, and will inevitably delay the grant of license assignments and transfers. Thus, NAB agrees with those commenters who advised against “includ[ing] more detailed information about parties” to transfer and assignment applications in the public notices of station sales. Comments of SRG and PRC at 5.⁸

⁶ See *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) (FCC’s preference for license applicants who promised that the station’s owners would personally participate in its management and operation was found to be arbitrary and capricious, in large part because there was “no evidence to indicate that [this policy] achieve[d]” any “benefits”).

⁷ See 47 U.S.C. § 310(d) (FCC may not consider whether the “public interest, convenience, and necessity might be served” by the transfer of a station “to a person other than the proposed transferee or assignee”).

⁸ Some commenters called for extending these proposed additional notice requirements to renewal applications. See Comments of UCC *et al.* at 16-17. But the FCC already requires a standardized text for the public notices made by renewal applicants, and imposes rules for their frequency of airing. No showing has been made that the Commission’s existing rules are in any way insufficient to alert members of the public as to the filing of station renewal applications and their right to comment on those applications. Indeed, the required public notice specifically advises individuals of their right to file comments or petitions and the due date for such filings against renewal applications. See 47 C.F.R. § 73.3580(d)(4). NAB also observes that much of the additional information that UCC specifically proposed for inclusion in renewal notices does not logically translate to the renewal context. For example, UCC called for the inclusion in renewal notices of “language about whether the proposed *buyer* is local” or “owns other media outlets.” Comments of UCC *et al.* at 16 (emphasis added). Of course in the renewal context, there is no buyer and no seller, and the question before the Commission is whether the existing licensee has served the public interest, convenience and necessity and whether there have been serious

NAB also cautions the Commission about expanding the scope of public notice requirements beyond that sufficient to “promot[e] public awareness” of sale “application filings,” while “minimizing burdens” on “broadcasters,” particularly small and noncommercial educational ones. *Notice* at ¶ 7. For example, there is no reason to believe that it is necessary to increase the frequency with which notices of sales must be broadcast from once a day for four days over one week to “four times a day each day from the filing of [the transfer or assignment] application to the deadline for the filing of public comments” (a period likely to be well over 30 days). Comments of UCC *et al.* at 11.⁹ No showing has been made that such significant increases in the scope and burden of the public notice requirements are needed to adequately inform the public of sale application filings. *Accord* Comments of SRG and PRC at 4-5.

In this regard, NAB further notes that the burden of requiring the notices of sale to be aired in *all* languages in which a radio or television station broadcasts programming may outweigh the public benefits, especially for stations that broadcast in several languages.¹⁰ NAB is aware of radio and television stations that air programming in six, eight or even ten languages.¹¹ Such

violations (or other violations constituting a pattern of abuse) of FCC rules by the licensee. 47 U.S.C. § 309(k).

⁹ UCC also proposed that at least twice a day, the notice should be given at “drive time” for radio and “prime time” for television and that two different notice announcements be required (*i.e.*, one to be used between the time a licensee files an application for a station sale and the time that the FCC issues its notice of the application’s acceptance, and one to be used after the notice of acceptance is issued). Comments of UCC *et al.* at 11-12.

¹⁰ See Comments of UCC *et al.* at 10-11 (proposing that licensees be obligated to give sale notices in all languages in which the station broadcasts and be required to broadcast the notice in the language that the station is broadcasting at the time of the announcement).

¹¹ For example, KTSF, an independent television station in San Francisco, currently airs programming in Cantonese, Mandarin, Japanese, Taiwanese, Vietnamese, Tagalog, Korean, Hindi, Farsi, Greek, and English. See www.ktsf.com (last visited August 12, 2005). WNWR-AM in Philadelphia is a multilingual radio station airing programming in Russian, Ukrainian, French, Spanish, Polish and Cambodian. See www.wnwr.com (last visited August 12, 2005).

stations may air programming in some of these languages for only a few hours per week. The public benefit to be gained from requiring station sales notices to be aired in all of these languages appears limited. One should not assume that a consumer who views or listens to specialized foreign language programming a few hours per week cannot understand any other language and cannot be informed by on-air and print notices in other languages. Thus, NAB agrees with those commenters who advised against requiring public notices of sales to be aired and published in multiple languages. *See* Comments of SRG and PRC at 5.

NAB agrees, however, that certain other proposals made in this proceeding may well prove useful in providing information to the public. For example, the “creation of an FCC site devoted specifically to proposed transfers and assignments of broadcast stations” could, if properly devised, assist in better informing the public about pending station sales. Comments of SRG and PRC at 3.¹² In addition, given the rapid growth in Internet availability and use,¹³ NAB agrees with other commenters that the Commission should consider allowing stations the option of posting

¹² *Accord* Comments of UCC *et al.* at 3-5. Practical questions will, however, arise if this specialized website is to be used for actual filings, as well as to provide information on proposed transfers and assignments. For example, if comments, objections or petitions to deny against transfer and assignment applications are to be filed at this site, would broadcasters also file their applications at this specialized site, rather than through the regular CDBS site? Or would transfer and assignment applications continue to be filed through CDBS, and the FCC would create links from the specialized site to CDBS so that filed applications could be accessed? It may promote confusion for both broadcasters and members of the public to have multiple sites for the filing of broadcast applications and comments/objections thereto (*i.e.*, one for sales and a different one for other types of broadcast applications and pleadings). Whatever the FCC ultimately decides about a specialized web site, NAB agrees with other commenters that broadcasters will need to receive timely notice of comments on and objections to any applications, including transfer and assignment applications. *See* Comments of SRG and PRC at 4.

¹³ In 2004, 75 percent of Americans could access the Internet from some location (*e.g.*, home, work or school). Moreover, the “fastest-growing Internet user populations are groups that were once considered the primary victims of the digital divide,” including minorities and older Americans. Significantly, the “Internet has become the number one source of information for Internet users” – it is the “primary place they go for research [and] general information.” *Surveying the Digital Future: Ten Years, Ten Trends*, USC Annenberg School, Center for the Digital Future at 20, 23 (Sept. 2004).

public notices of sales on their station websites, rather than publishing these notices in newspapers. *See* Comments of SRG and PRC at 4.¹⁴

In sum, NAB understands and supports the Commission's interest in informing members of the public about the sales of broadcast stations in their communities. NAB accordingly supports proposals made in this proceeding that directly further this goal (such as ones to utilize the FCC's and stations' websites to better inform viewers and listeners), but opposes proposals that would likely confuse the public, unduly burden small and noncommercial stations, and ultimately slow the Commission's processes and delay the grant of meritorious assignment and transfer applications.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430



Marsha J. MacBride
Jerianne Timmerman

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¹⁴ Other commenters proposed that stations be required to post notices of sales on their station websites, *in addition* to publishing such notices in newspapers and, of course, making on-air announcements. While it remains unclear whether there is a need to provide notices via the Internet, newspapers *and* on-air, the Commission, if it ultimately determines to adopt an Internet notice requirement, should not require stations (such as small radio stations, some of which may still not have websites) to *create* a website for this purpose. *See* Comments of UCC *et al.* at 15 (“the Commission should require stations *that have websites* to post notice of the proposed sales on those sites) (emphasis added).